

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Donald Hall,
Petitioner

vs

Case No. 1:02cv488
(Spiegel, Sr. J.; Hogan, M.J.)

Christopher Yanai,
Respondent

ORDER

On June 21, 2005, a final Order and Judgment was entered adopting the undersigned United States Magistrate Judge's Report and Recommendation to dismiss petitioner's petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 with prejudice. (*See* Docs. 33, 36, 37). In the Order and Judgment, the Court granted a certificate of appealability; the Court also certified pursuant to 28 U.S.C. § 1915(a)(3) that an appeal would be taken in "good faith" and, therefore, granted petitioner leave to proceed on appeal *in forma pauperis* upon a showing of financial necessity. (Docs. 36, 37).

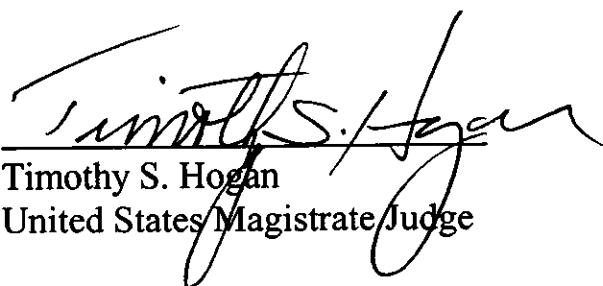
This matter is now before this Court for ruling on petitioner's application and affidavit to proceed on appeal *in forma pauperis* (Doc. 39), as well as petitioner's motion for appointment of the Ohio Public Defender's Office to represent him on appeal (Doc. 40). Petitioner's financial affidavit (Doc. 39) demonstrates that petitioner has insufficient funds to proceed on appeal from the Court's final Order and Judgment. Upon such showing of financial necessity, this Court hereby GRANTS petitioner's application for leave to proceed on appeal *in forma pauperis* (Doc. 39) in accordance with its June 21, 2005 Order and Judgment (*see* Docs. 36, 37).

It is FURTHER ORDERED that petitioner's motion for appointment of counsel on appeal (Doc. 40), which has not been opposed by respondent, is GRANTED. Given that petitioner apparently is illiterate and his mental competence has been called into question, it is in the interests of justice to appoint the Ohio Public Defender's Office to represent him for purposes of appeal. *See* 18 U.S.C. § 3006A(a)(2).

IT IS SO ORDERED.

Date:

8/13/05
cbc


Timothy S. Hogan
United States Magistrate Judge

J:\BRYANCC\2005 habeas orders\02-488ifp-apptcounsel.appeal.wpd